TAN LIM

v.

TIMBALAN MENTERI HAL EHWAL DALAM NEGERI, MALAYSIA & ORS.

HIGH COURT MALAYA, KUALA LUMPUR
EUSOFF CHIN J
[ORIGINATING SUMMONS NO. R8-24-37-89]
5 MAY 1989

ADMINISTRATIVE LAW: *Sections 2, 3 of the Restricted Residence Enactment - Detention order - Whether detention becomes illegal because of delay - Action taken within reasonable time is allowable.*

The plaintiff was to be detained in the Pudu Prison under s. 2(i) of the Restricted Residence Enactment until the Prison Superintendent received further orders from the Minister. On 18 June 1988, an order (Form C) under s. 2(ii) was issued by the Deputy Minister of Home Affairs whereby the plaintiff was to reside for a period of 3 years from the date of the order, in the town council area of Kuala Krai.

There was a delay of 6 days before the police transferred him from Pudu Prison to Kuala Krai. The delay was explained by the police as arrangements were necessary to get the order served on the plaintiff and his transportation to Kuala Krai would only be finalised on 24 June 1988.

Plaintiff contested that since the 3 year period specified was to take immediate effect from the date of the order, the delay of 6 days was fatal since the plaintiff's detention at Pudu Prison had become invalid & illegal as he should have been taken to Kuala Krai immediately. However, the learned Senior Federal Counsel quoted s. 3(ii) of the Enactment.

Held:

[1] The order was made to take effect from date of the order because the order had to be made in Form C of the Enactment. The Minister could deviate from the words used in Form C if he is of the opinion that the order could not be executed immediately because where forms are prescribed, slight deviation therefrom not affecting the substance or not calculated to mislead shall not invalidate the forms (s. 7 of the Interpretation & General Clauses Ordinance 1948).

[2] Distinguishing *PP v. Koh Yoke Koon*, the plaintiff's further detention in Pudu Prison after the date of the order was not illegal because s. 3(ii) of the Enactment allows time for the Minister's order to be executed. The words "as soon as may be" in s. 3(ii) does not envisage immediate action, but the action must be taken with all convenient speed depending on the circumstances of each particular case.

[Plaintiff's application dismissed.]

Cases referred to:
PP v. Koh Yoke Koon [1988] 1 CLJ (Rep) 269
Aminah v. Supt. of Prison, Pengkalan Chepa Kelantan [1968] 1 MLJ 92
Ooi Ah Phua v. OCCI Kedah/Perlis [1975] 2 MLJ 198

Legislation referred to:
Interpretation Act 1967, ss. 54(2), 62
Interpretation and General Clauses Ordinance 1948, ss. 7, 38
Restricted Residence Enactment (FMS 39), ss. 2, (i), (ii), 3, (ii),(i)

For the plaintiff - Karpal Singh; M/s. Karpal Singh & Co.
For the defendant - Nor Bahari, Government of Malaysia

JUDGMENT

Eusoff Chin J:

The Minister's order (Form A) under s. 2(i) of the Restricted Residence Enactment is for the detention of the plaintiff until the Prison Superintendent received further orders from the Minister, i.e., the period for the detention of the plaintiff at the prison was not specified.

On 18 June 1988 the Deputy Minister of Home Affairs issued an order (Form C) under s. 2(ii) of the Restricted Residence Enactment to the effect that the plaintiff was to reside for a period of 3 years from the date of the order, in the town council area of Kuala Krai.

DSP Pow Kim Guan was informed by the Assistant Secretary of the Ministry of Home Affairs at 12.30 p.m. on 18 June 1988 of this order. It was Saturday. On Monday 20 June 1988 he collected the order. The Prison Officer of Pudu Prison received the order on the afternoon of 22 June 1988 from the police. The next day he prepared the necessary papers and made the necessary arrangements to serve the order on the plaintiff. On 24 June 1988 the police collected the plaintiff to be taken to Kuala Krai.

The delay of 6 days had been explained by DSP Pow Kim Guan i.e., he had to make the necessary arrangements to get the order served on the plaintiff, and arrangements for transportation of the plaintiff to Kuala Krai. He could not get the transport finalised until 24 June 1988.

The main point raised by the learned Counsel for plaintiff is that since the 3 year period specified in the order was to take immediate effect from the date of the order, the delay of 6 days was fatal since the plaintiff's detention at Pudu Prison had become invalid and illegal as he should have been taken to Kuala Krai immediately. He cited *PP v. Koh Yoke Koon* [1988] 1 CLJ (Rep) 269 and a number of other persuasive authorities. The learned Senior Federal Counsel Encik Raos quoted s. 3(ii) of the Enactment. He also cited *Aminah v. Supt. of Prison, Pengkalan Chepa Kelantan* [1968] 1 MLJ 92 and *Ooi Ah Phua v. OCCI Kedah/ Perlis*, [1957] 2 MLJ 198. Further he explained that the order was made to take effect 'from this date' i.e., date of the order, because the order had to be made in Form C of the Enactment, and that 'Form C' para. (b) bears these printed words:

> (b) for the term of ... years from this date.

I believe that the minister could deviate from the words used in Form C if he is of the opinion that the order could not be executed immediately because s. 7 of the Interpretation and General Clauses Ordinance 1948 (and similar provisions under s. 62 of the Interpretation Act 1967) states that where forms are prescribed, slight deviation therefrom not affecting the substance or not calculated to mislead shall not invalidate the forms.

However, unlike the respondent in *PP v. Koh Yoke Koon*, the plaintiff here was under lawful detention at Pudu Prison under the Minister's order made in Form A under s. 2(i) of the Enactment and his detention would continue until further orders issued by the Minister such as the one made in Form C under s. 2(ii) of the Enactment. It would appear that as on 18 June 1988, when the Minister made the order in Form C, the plaintiff should be released from Pudu Prison to be taken to Kuala Krai, and his further detention in Pudu Prison after this date would appear to be illegal. This is, however, not the case here since s. 3(ii) of the Enactment allows time for the Minister's order to be executed. Section 3 of the Enactment states:

3.(i) When any such order as is referred to in s. 2 subsection (ii) or s. 2A has been made with reference to any person, he shall be taken before the officer-in-charge of the prison in which he is detained and the officer-in-charge shall inform him of the terms of the order and shall deliver to him a copy thereof and shall require him to state the place in which, consistently with the terms of the order, he desires in the immediate future to reside.

(ii) As soon as may be after action has been taken under subsection (i), the officer-in-charge shall hand over the person to whom the order relates together with a warrant of release in the Form in the schedule to any Police Officer appointed by the Chief Police Officer to receive him, and the person shall thereupon be conveyed under police escort to the place wherein he states he wishes to reside and shall there be released.

(iii) In this section and in the schedule "officer-in-charge" has the meaning assigned in the Prisons Ordinance 1952.

My view is that the officer-in-charge of the prison can only take action under s. 3(i) when he has received the order from the Minister. The words "as soon as may be" in s. 3(ii) of the Enactment does not envisage immediate action, but the action must be taken with all convenient speed depending on the circumstances of each particular case. Section 38 of the Interpretation and General Clauses Ordinance 1948 (similar provision is found in s. 54(2) of the Interpretation Act 1967) states:

38. Where no time is prescribed or allowed within which anything shall be done, such thing shall be done with all convenient speed and as often as the prescribed occasion arises. See MLJ 1961, p. 269.

Further, the words "as soon as may be" had been held to mean as nearly as may be reasonable in the circumstances of the particular case - *Aminah v. Supt. of Prison Pengkalan Chepa*, [1968] 1 MLJ 92. The authorities have, of course, to explain to the satisfaction of the Court why action could not be sooner taken.

In this case there was a delay of 6 days before the plaintiff was taken to Kuala Krai. The affidavits of both DSP Pow Kim Guan and the Asst. Superintendent of Prison Teoh Chen Ming have explained the delay to my satisfaction.

I therefore find and declare that the order made by the Minister in Form C dated 18 June 1988 is valid and that the plaintiff has to comply with that order.

I make similar findings and declarations in respect of the other applications in O/M R8-24-38/89, O.M. R8-24-39/89, and OM R8-24-40/89.

Costs to the defendants.

Also found at [1990] 1 CLJ 333